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06 DEC 2004

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITYTo:
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RECEIVED

NOV 12 2004

EDWARD & ANGELL, LLP
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PCT

WRITTEN OPINION

(PCT Rule 66)

Date of Mailing
(day/month/year)

09 NOV 2004

Applicant's or agent's file reference

59200-PCT

REPLY DUE

within 2 months/days from
the above date of mailing

International application No.

PCT/US03/17903

International filing date (day/month/year)

06 June 2003 (06.06.2003)

Priority date (day/month/year)

06 June 2002 (06.06.2002)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): H01J 40/14; H01J 31/50 and US Cl.: 250/214VT, 332, 339.02, 339.12, 339.14; 356/311

Applicant

THE JOHN HOPKINS UNIVERSITY

1. This written opinion is the first (first, etc.) drawn by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

3. The applicant is hereby **invited to reply** to this opinion.**When?**See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension. See rule 66.2(d).~~**How?**

By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

AlsoFor an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6**If no reply is filed**, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary

examination report must be established according to Rule 69.2 is: 06 October 2004 (06.10.2004)

Name and mailing address of the IPEA/US

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Commissioner for Patents

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Form PCT/IPEA/408 (cover sheet)(July 1998)

Resp to Written Opinion
Edwards & Angell LLP
101 Federal St. Boston, MA 02110

Docketed For

By

12/9/04 - 1/9/05
PMB

WRITTEN OPINION

International application No.

PCT/US03/17903

I. Basis of the opinion

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed
- ☒ the description:
 - pages 1-36 _____, as originally filed
 - pages NONE _____, filed with the demand
 - pages NONE _____, filed with the letter of _____
- ☒ the claims:
 - pages 37-41 _____, as originally filed
 - pages NONE _____, as amended (together with any statement) under Article 19
 - pages NONE _____, filed with the demand
 - pages NONE _____, filed with the letter of _____
- ☒ the drawings:
 - pages 1-12 _____, as originally filed
 - pages NONE _____, filed with the demand
 - pages NONE _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
 - pages NONE _____, as originally filed
 - pages NONE _____, filed with the demand
 - pages NONE _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☒ The amendments have resulted in the cancellation of:

- ☒ the description, pages NONE _____
- ☒ the claims, Nos. NONE _____
- ☒ the drawings, sheets/fig NONE _____

5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

WRITTEN OPINION

International application No.

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III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The question whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
☒ claims Nos. 5-19 and 24-36

because:

- ☐ the said international application, or the said claim Nos. _____ relate to the following subject matter which does not require international preliminary examination (*specify*):

- ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 5-19 and 24-36 are so unclear that no meaningful opinion could be formed (*specify*):

With respect to claims 5-19, a multiple dependent claim shall not serve as a basis for any other multiple dependent claim. PCT Rule 6.4 (a).

With respect to claims 24-36, any dependent claim (multiple dependent claim) shall refer to such other claims in alternative only and a multiple dependent claim shall not serve as a basis for any other multiple dependent claim. PCT Rule 6.4 (a).

- ☐ the claims, or said claims Nos. _____ are so inadequately supported by the description that no meaningful opinion could be formed.
☐ no international search report has been established for said claims Nos. _____.

2. A written opinion cannot be drawn due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

- ☐ the written form has not been furnished or does not comply with the standard.
☐ the computer readable form has not been furnished or does not comply with the standard.

WRITTEN OPINION

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V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)	Claims <u>NONE</u>	YES
	Claims <u>1-4 and 20-23</u>	NO
Inventive Step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-4 AND 20-23</u>	NO
Industrial Applicability (IA)	Claims <u>1-4 AND 20-23</u>	YES
	Claims <u>NONE</u>	NO

2. CITATIONS AND EXPLANATIONS

Claims 1-4 and 20-23 lack novelty under PCT Article 33(2) as being anticipated by U.S. Patent No. 3,758,778 to Braunlich.

With respect to claims 20-23, Braunlich discloses a visual converter device comprising an electro-optical device that is sensitive to light in a specific wavelength range and configured to intensify light in this wavelength range focused on its input face to an image that can be directly visualized at the output face; and a housing that minimizes external stray light from being observed at the output face of the electro-optical device.

With respect to claims 1-4, the method for microscopic visualization of a sample is inherent to the device disclosed with respect to claims 20-23 above.

----- NEW CITATIONS -----

WRITTEN OPINION

International application No.
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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

TIME LIMIT:

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.